U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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NOV 23 2004

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FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the son of a U.S. citizen and parent of two U.S. citizen children, aged 10 and 13. He seeks a waiver of inadmissibility to remain in the United States with his family and adjust his status to that of a lawful permanent resident.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen mother and denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship to his mother on the record below. In support of the appeal, counsel submits a brief. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's 1985 fraudulent use of a passport to gain entry to the United States. *Decision of the District Director* (September 3, 2003) at 2. The district director's determination of inadmissibility is not contested by the applicant.

Section 212(i) provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien herself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,*

the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The AAO notes that the record contains references and documentation addressed to the hardship that the applicant's children would suffer if he were refused admission. As noted above, a waiver of inadmissibility under section 212(i) of the Act is available solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Hardship to the applicant's child will therefore be taken into account only as it contributes to the overall hardship faced by the only qualifying relative in this case for whose benefit the waiver can be granted, the applicant's U.S. spouse.

The applicant's mother [redacted] is a 72-year-old native of the Philippines, who became a naturalized U.S citizen in 1990. She indicates that her brother is a U.S. citizen and living in California, and she has other adult children in the United States who are lawful permanent residents. *Declaration of Remedios B. Yumul* (May 17, 2003). She lives with the applicant. She states that the applicant works nearby the family home and is therefore easily accessible to her, if she urgently needs assistance. *Id.* She indicates that she is very close with the applicant and has seen him every day since his arrival in the United States in 1985. Counsel asserts that she requires the financial support of the applicant, relies on him for personal care, and will suffer severe emotional distress if separated from her son. Tax records for Ms. Yumul show that her annual income for the tax year 1997, the latest year on record, was under $1000. Counsel states that she suffers from diabetes and

high blood pressure and [redacted] adds that she has had an unspecified heart ailment. A doctor's letter indicates that she has had diabetes since 1978, and "ischemic heart disease with cardiac arrythmia [sic]," for which she takes various medications. *Letter of George T. Yang* (May 20, 2003). Her prognosis and treatment requirements are not specified, except for the statement that "she is unable to live by herself, she need [sic] to be with family member [sic] to provide care for her." Without further explanation or documentation and without evidence of the doctor's credentials, the AAO cannot accord great weight to the conclusory statement that [redacted] cannot live alone for medical reasons and finds the statement of little probative value in evaluating the seriousness of her medical conditions with respect to the hardship she would face if the applicant is not admitted.

Counsel asserts that, if [redacted] relocates to the Philippines to avoid separation from her son, she will be unable to obtain the needed medical care. Counsel also states that she has no remaining family ties in the Philippines (the applicant's father is deceased). Counsel further asserts that, due to the applicant's 19-year absence from the Philippines and his age (42), the applicant will have significant difficulty finding work in order to continue providing financially for his mother and children. It appears that the applicant currently provides about 40% of the approximately $50,000 annual household income. *See Affidavit of Support* (Form I-864). He is employed by a major department store, but his profession is not specified in the record. Tax records indicate that he does not claim his mother as a dependent. *Id.* The record contains no country conditions documentation about the Philippines to support counsel's contentions regarding health care or the economy as they relate to the applicant and his mother.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [redacted] faces extreme hardship and the applicant is refused admission, particularly if she remains in the United States. Although [redacted] lives with the applicant, there is no evidence on record to show that she is unable to live with or be cared for by other family members in the United States. There is no evidence of the expenses that the applicant covers for her due to her limited income, or evidence that he and his other family members could not collectively continue to support her even if the applicant departs from the United States. The medical evidence is insufficient to establish that the advantages provided by the applicant's proximity to her while he is at work cannot be achieved with other family members or that disruption of their current arrangement could result in extreme hardship to the applicant's mother. The medical and other evidence further does not support a finding that [redacted] is unable to travel to visit her son on occasion to diminish the impact of separation. Rather, the applicant seems to primarily rely on the emotional connection to his mother, without sufficiently setting forth and documenting serious medical, financial, or other impact. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. While the [redacted] Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. U.S. court decisions, including those of the Ninth Circuit, have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or

prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984); *Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.") Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The record does not contain sufficient evidence to show that the particular hardship faced by the qualifying relative rises beyond common difficulties of separation or relocation to the level of extreme. *See Ramirez-Durazo, supra.*

The AAO therefore finds that the applicant failed to establish extreme hardship to a qualifying relative as required under INA § 212(i), 8 U.S.C. § 1186(i). As the applicant has failed to establish statutory ineligibility, no purpose would be served by discussing whether he merits a favorable exercise of discretion, as advocated by counsel.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.